

# REA LAW JOURNAL

DEPARTMENT OF AGRICULTURE

RURAL ELECTRIFICATION ADMINISTRATION

Vol. 1, No. 9

August, 1939

Page 74

## RECENT CASES

### Corporations - Proxy Voting

State statute provides that "every corporation shall have the power:... to make bylaws...determining...the mode of voting by proxy...." The point of controversy is whether the statute impliedly grants the right of proxy voting in the absence of any provision on the subject in the articles of incorporation or the bylaws. Held, that the fact that the corporation has the power to determine the mode of voting by proxy does not, without implementation by the articles or the bylaws, necessarily imply existence of proxy voting. Pohle v. R. I. Food Dealers Assn., 7 A. (2d) 267 (R. I. 1939).

The conclusion of the court in this instance was fortified by an additional statute which provided that the articles of incorporation or the bylaws of any corporation organized under the statute "may provide that members may vote...by proxy." In the absence of the latter provision, which the court accepted only as confirmation of its view, the question would appear to be much closer.

### Corporations - Quorum

City Council of X municipality was composed of five members as provided by statute. Pursuant to a recall law, two members of the council were recalled. The voters at the recall election stipulated that the council should fill the

vacancies created by the recall. Before the remaining three councilmen filled the vacancies one of them resigned and the two councilmen left refused to elect new councilmen on the theory that they did not constitute a quorum and consequently were without authority to transact business. A taxpayer seeks to compel the two councilmen to appoint new members to fill the vacancies by a mandamus petition. Held, peremptory writ of mandamus should issue. Nesbit v. Bolz, 91 P. (2d) 879 (Calif. 1939).

### Electricity - Negligence

Electric Company constructed service wires parallel to building. There was a space of a few feet between the building and the wires. Company failed to install a post or wall bracket to hold the weight of the service wires and to prevent swaying. Company also failed to inspect wiring since installation. Wires while swaying came into contact with metal sheet covering building and fire started. Held, Electric Company liable for damage since service wires were improperly installed and Company had failed to make proper inspection. Vannett v. Michigan Public Service Co., 286 N.W. 216 (Mich. 1939).

### Refunding Bonds - Equality of Position as Between Holders of Original Bonds and Holders of Refunding Bonds

Corporation issued \$130,000 in bonds



secured by a deed of trust in 1924. In 1930 a second deed of trust was executed by the mortgagor covering the same trust estate and providing for the sale of refunding bonds to the public, the proceeds of the sale to be used to purchase the outstanding bonds. The refunding bonds extended the maturity date and yielded a lower rate of interest. Some of the holders of the original bonds refused to exchange them for the refunding bonds. The original bonds matured in 1933 at which time the mortgagor defaulted. The holders of the original bonds seek priority over the holders of the refunding bonds. Held, no such priority exists. Marden v. Elks Club, 190 So. 40 (Fla. 1939).

The court stated that it was clear that where there was an exchange of bonds - and the bondholders are the same people - that the old debt continues and no new debt is contracted. Here, where many of the refunding bonds are sold to new bondholders, the proceeds being used to redeem the original issue, there is a division of authority on the subject. This court felt, however, that the better view is that the lien of the original deed of trust has been preserved for the benefit equally of the holders of the new as well as the old bonds.

#### State Rural Electrification Authority - Powers

Plaintiff, as member of Electric Cooperative Association and as a taxpayer brought an action to enjoin the sale of electric transmission and distribution lines of the State Rural Electrification Authority to the cooperative. The complaint alleges that the Authority is not authorized by law to convey the lines. Held, that the Authority had power granted by statute to make a conveyance of the proposed lines. Woodward v. State Rural Electrification Authority, 3 S.E. (2d) 539 (S.C. 1939).

The sections relied upon by the court to demonstrate the power of the Authority to act are contained in S. C. Acts, 1935, No. 65. These provide in general that the purpose of the Authority shall be to encourage and promote the fullest possible use of energy by all inhabitants of the state and to exercise "all power necessary or requisite for the accomplishment of its corporate purpose," and, finally, to "acquire, hold and dispose of property, real and personal, tangible or intangible ...." After enumerating these and other sections the court states that they must be construed to effectuate the legislative intent and read in the light of the circumstances as they appeared to the legislature and the purpose sought to be accomplished thereby. After discussing these rules the court states: "Applying the foregoing rules of construction to the act now before the Court and bearing in mind that before and since the passage of this act there has been a widespread demand by farmers and an effort on the part of the State to provide rural sections with electrification, it is my opinion that the lease and sale contract would be in furtherance of the corporate purpose of the Authority...."

#### RECENT STATUTES

##### CALIFORNIA

#### Burden of Maintenance Placed Upon Easement Holder

Section 845 of the Cal. Civ. Code was enacted providing that the owner of any easement in the nature of a right of way shall maintain it in repair. Laws, 1939, c.755 (Approved, July 15, 1939).

#### Enacts New General Cooperative Act

Title XXV has been added to the Civil Code to provide for the incorpora-



### REA LAW JOURNAL

A review of that portion of the law important and interesting to attorneys working in the field of rural electrification.

#### Published Monthly

The Journal is informational only and should in no wise be interpreted as expressing the views of the Rural Electrification Administration or any division thereof.

Address suggestions and contributions to the Editorial Office - REA, Room 203, 1518 "K" Street, Washington, D. C.

tion of cooperative associations for "the purpose of conducting any lawful business." The Act is now under study to see if it offers advantages over the existing incorporation procedure for REA projects. Laws, 1939, c.808 (Approved July 21, 1939).

### ILLINOIS

#### Certificate No Longer Required Re Election of Officers

It is no longer necessary for a corporation to execute under seal and to record in the office of the Recorder of Deeds a certificate stating the names of the trustees, managers or directors who have been elected and the terms of their office, where the certificate of organization is recorded. Similarly, such certificate need not be recorded upon the filling of a vacancy in the board of trustees, directors or managers. H.B. No. 696, Approved July 12, 1939.

### WISCONSIN

#### Rural Electrification Coordination Division Established

By statute Wisconsin has established within the Department of Agriculture the Wisconsin Rural Electrification Coordination Division. The functions and duties of the Division are to obtain, digest and disseminate all available information on rural electrification and to cooperate with the Federal Government and private companies in order to make electric service available to all Wisconsin farmers. \$5,000 for the present year and \$15,000 annually thereafter is appropriated in order to carry out the program. Laws, 1939, Chapter 321 (Approved August 9, 1939).

#### REVIEWING THE LAW REVIEWS

Dean, Non-Compliance with Proxy Regulations: Effect on Ability of Corporation to Hold Valid Meeting (1939) 24 Corn. L. Q. 483.

The article is primarily concerned with Regulation X-14A of the S.E.C. but contains interesting general material on the law relating to proxies.

Ginsburg, Mortgages of After-Acquired Personalty in Nebraska - A Resurvey (1939) 18 Neb. L. Bull. 246.

#### LEGAL MEMORANDA RECEIVED IN JULY

767-A Federal Jurisdiction Over Foreclosure Suit Brought By Trustee Under Deed of Trust to Secure Loan Made by the Government.



A-11 Vote of Membership Required By Model Electric Cooperative Act for Conversion.

A-12a Power of Oklahoma Electric Cooperative to Own Stock in Another Cooperative as Affected by Oklahoma Constitution.

A-14a Necessity of Affirmative Action By Cooperative to Accept Applicants for Membership as Members.

A-16 Requirements of Acknowledgement For New Mexico Conditional Sale Contract.

A-17 Power of Virginia Cooperative To Do Business In Tennessee.

A-19 Meaning of "Fixed Amount" As Found In Washington Public Utility District Act.

A-20 Statutory Penalties For Unlawfully Cutting Down Trees And Effect Of Condemnation Proceedings On Liability Of Trespasser.

A-23 Requirement of Submission of Additional Notes to Trustee for Examination Under REA Deeds of Trust.

A-24 Financing Procedure for Sale of Irrigation Equipment in New Mexico.

A-27 Liability of Cooperative for Negligence Resulting in Failure of Service to Members.

A-30 Miscellaneous Problems Connected with North Carolina Revenue Bond Issue.

A-31 Requirements for Recordation of Assignments of Mortgages in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia.

A-32 Transmission and Transportation of Electricity Across State Lines and Necessity for Qualifying Under State Statutes.

#### TAX MEMORANDA

T-148 Applicability of Colorado Sales Tax to Sale of Electricity by Cooperative to Members.

T-149 Colorado Retail Sales and Service Tax Act.

T-150 By Whom Electric Transmission Line Should Be Assessed in Idaho.

T-151 Liability of Oklahoma Cooperative for Taxes After Transfer of All Its Assets to New Corporation.